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SUBJECT: ANADARKO VS. SONATRACH -- UPDATE ON THEIR
INTERNATIONAL ARBITRATION CASE

Classified By: Ambassador David D. Pearce. Reasons 1.4(b), (d)

Summary

¶1. (C) The head of Algerian operations of the U.S. oil company Anadarko told the Ambassador this week that his company's dispute continues with the state oil company Sonatrach over the government's application of the windfall profit tax provision of the 2006 Hydrocarbons Law to Anadarko's operations, in violation of provisions in the company's production sharing agreement. Anadarko took the case to international arbitration, after the GOA abruptly pulled out of negotiations late last year. Anadarko doesn't expect a decision before 2012. Its claims amount to over USD 3 billion. Company attorneys are confident they will win. At the same time, highly-placed GOA officials have strongly hinted the government will not pay if it loses. If the GOA does not pay, Anadarko may move to seize Sonatrach assets abroad. The case is symptomatic of the Algerian government's penchant to change the rules of the game for foreign business without warning or consultation, often in violation of internationally-accepted norms. END SUMMARY.

Anadarko/Sonatrach Dispute

¶2. (C) Anadarko Algeria President Dick Holmes updated the Ambassador January 27 on the status of Anadarko's longstanding tax dispute with the Algerian government. Ambassador was accompanied by Pol-Econ Chief and Econoff. Holmes recalled that amendments to the Hydrocarbons Law adopted in 2006 included the Tax on Exceptional Profits (TPE -- a windfall profit tax), which imposed a steep levy on all production revenue when the price of oil exceeded USD 30 per barrel -- not just the revenue gained in the margin between current price and the USD 30 threshold. Anadarko says it and several European companies were hit the hardest, because their concessions were granted before standard contract language incorporating the higher tax rates mandated by the 2006 law. The Ministry of Energy and Mines, Holmes continued, believes that the mere attractiveness of Algerian fields will draw companies to continue making bids even under these burdensome tax provisions.

¶4. (C) During a meeting last year, Holmes explained that Anadarko faced a USD 450-million annual tax liability under this new provision. At that meeting, he related that the company decided to invoke the arbitration clause in its contract. Anadarko opened the arbitration case while simultaneously offering a compromise tax plan to Sonatrach and the Ministry of Energy and Mines. Negotiations appeared to be going well, and Anadarko believed it was close to a deal. Then, in the course of a meeting with Sonatrach officials last June, at which Holmes was present, the senior Sonatrach VP was called out of the room to receive a phone call. When he returned, he told Anadarko that a negotiated

solution was not possible and that Sonatrach was breaking off negotiations.

15. (C) Holmes explained that a preliminary arbitration hearing ("conciliation") was held in Geneva last year. On February 12, Anadarko will submit a "memorial" laying out its claim. Sonatrach is then expected to submit its response by July. The actual decision-making session is scheduled for June 24, 2011 in Paris and will last two weeks. Anadarko expects a decision not before 2012. Holmes told us that, over the course of the last year, Sonatrach had dismissed its lawyers and hired a New York-based attorney whose firm has defended the Venezuelan national oil company PDVSA against foreign producers. Holmes said that the amount being claimed will be at least USD 3 billion.

16. (C) Holmes affirmed that Anadarko's attorneys are confident they have a winnable case and are determined to pursue it to a decision. He said that senior Sonatrach officials are aware they could lose the case, but they have hinted to Anadarko that "it could win the battle but lose the war," meaning that it is unlikely that the Government of Algeria will actually pay. Even if does, it can extract equivalent costs from Anadarko by other means, up to and including nationalization. Holmes says the attorneys are certain that the decision will be enforceable, if not in Algeria then through the seizure of Sonatrach assets abroad. According to Holmes, Minister of Energy and Mines Chekib Khelil told Anadarko's chairman that even if he wanted to resolve the dispute, he would not be able to do so and that this action was taken when he was out of the country.

No USG Intervention Desired

17. (C) Holmes said the Anadarko lawyers had explicitly instructed company officials not to request USG assistance. However, Holmes considered it in his company's interest to keep the Embassy apprised of the progress of the case. Anadarko's management has instructed him not to approach Sonatrach on this issue again and to re-engage only if Sonatrach approaches him. Holmes told us that the Sonatrach corruption scandal has paralyzed most of that company's high-level decision-making and hit the very Sonatrach VP with whom Anadarko had been trying to reach a settlement outside of court.

Comment

18. (C) Anadarko lifts more oil than any foreign company operating in Algeria and worked here throughout the darkest years of Algeria's fight against terrorism. Its production sharing agreement (PSA) predates the 2006 reform to the Hydrocarbons Law, which mandated majority Algerian participation in all new hydrocarbon investment and imposed steep taxes on oil profits whenever the price of oil exceeded USD 30/bbl. Anadarko thinks international law and practice is on its side and that new legislation should not preempt its PSA. The GOA, by contrast, firmly believes that national political sovereignty trumps international law. This case is symptomatic of Algerian government willingness to change the rules of the game to the detriment of private business, particularly with foreign companies. If Sonatrach loses the case, we believe it is highly unlikely it will pay. Anadarko would then have to consider whether to move against Sonatrach assets abroad.

PEARCE